

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Government,

v.

HONORABLE GEORGE CARAM STEEH

No. 16-20098

KHALIL ABU-RAYYAN,

Defendant.

BOND HEARING

Monday, April 18, 2016

- - -

APPEARANCES:

For the Government:

RONALD W. WATERSTREET, ESQ.
Assistant U.S. Attorney

For the Defendant:

TODD SHANKER, ESQ.
BENTON MARTIN, ESQ.

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N O N E

Detroit, Michigan

Monday, April 18, 2016

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THE CLERK: Case Number 16-20098, United States versus Khalil Abu-Rayyan.

THE COURT: Good morning.

MR. WATERSTREET: Good morning.

MR. SHANKER: Good morning.

THE COURT: Would you like to state your appearances?

MR. WATERSTREET: Good morning. Once again, Ron Waterstreet on behalf of the United States.

THE COURT: Okay. Welcome.

MR. SHANKER: Good morning, your Honor. Todd Shanker on behalf of Khalil Abu-Rayyan who is seated to my left, and we also have Benton Martin from our office as well.

THE COURT: All right. Welcome.

The Court has two matters to address today; first a request to release the defendant pretrial, and the second motion by the government to order an examination, psychiatric examination of the defendant for competency.

We'll address the bond motion first.

MR. SHANKER: All right. Thank you, your

1 Honor.

2 Your Honor, we intend to call Dr. Danuloff to the
3 stand, and I assume we'll take arguments after he has made
4 his presentation and testify.

5 **THE COURT:** All right, Mr. Shanker. That's
6 fine. Call your witness.

7 **MR. SHANKER:** We would call Dr. Lyle
8 Danuloff.

9
10 **L Y L E D A N U L O F F**

11
12 being first duly sworn by the Court to tell the truth, was
13 examined and testified upon his oath as follows:

14
15 **THE COURT:** I'm going initially ask you to
16 state your name and spell your last name for us.

17 **THE WITNESS:** Lyle, L-y-l-e, Dennis,
18 D-e-n-n-i-s, Danuloff, D-a-n-u-l-o-f-f.

19 **THE COURT:** Thank you. You may proceed.

20
21 **DIRECT EXAMINATION**

22
23 **BY MR. MARTIN:**

24
25 **Q.** Dr. Danuloff, can you tell us how you are employed?

1 **A.** I'm a fully licensed clinical psychologist, and I've
2 been in practice in the state of Michigan for 44 years.

3 **Q.** What are your responsibilities as a general
4 practitioner?

5 **A.** I'm call myself a general practitioner, but my
6 practice involves psychotherapeutic treatment of adults
7 and adolescence. I also do marital work, and a
8 significant portion of my practice involves forensic work,
9 which is the application of psychological principles as to
10 matters of law.

11 **Q.** Do you also have experience with treatment of
12 chemically dependent individuals?

13 **A.** Yes, I do.

14 **Q.** You also work as a consultant, is that right?

15 **A.** That's correct.

16 **Q.** What are some of the agencies that you work with as
17 a consultant?

18 **A.** Well, in addition to the couple of school districts
19 that I consult with, I consult with eight local police
20 departments, and in that consultation work I do critical
21 incident stress debriefings, fitness for duty evaluations,
22 and preemployment psychological evaluations.

23 **Q.** Could you explain what is involved in the fitness to
24 duty evaluation?

25 **A.** In a fitness for duty evaluation, an officer is

1 mandated by usually the chief of the department, to come
2 to me for psychological evaluation in order to determine
3 his or her fitness to return to duty, and when I do those
4 kinds of evaluations, I offer one of four conditions:

5 One, completely fit to return to duty without
6 restrictions; two, fit to return to duty under certain
7 circumstances; three, unfit to return to duty unless
8 certain circumstances are met, and four, unfit for duty.

9 Q. All right. How many individuals could you estimate
10 that you have evaluated psychologically?

11 A. In my career do you mean or fitness for duty
12 evaluation?

13 Q. In your career?

14 A. In 44 years, I don't have an exact count. I imagine
15 I have evaluated 250-300 people. Maybe a little bit more.

16 Q. Have you ever worked with our office?

17 A. No, I have not.

18 Q. Do you have affiliations with professional
19 psychological organizations?

20 A. Yes, I do.

21 Q. What are some of those?

22 A. I am member of the American Psychological
23 Association. I'm member of the Michigan Psychological
24 Association, and I was past president -- I am past
25 president. I was president in 1996. I was also a member

1 until the organization unfortunately wasn't able to
2 maintain itself, the Michigan Association of Forensic
3 Psychology, and I'm -- those are the organizations. I
4 think there is one more, but I don't have my C.V. with
5 me -- Institute of Continuing Legal Education.

6 Q. And you have given presentations in the field of
7 psychology as well?

8 A. Yes, sir, I have.

9 MR. MARTIN: Your Honor, I move to have Dr.
10 Danuloff testify as an expert in the field of
11 psychologist.

12 MR. WATERSTREET: May I voir dire?

13 THE COURT: Sure.

14
15 VOIR DIRE EXAMINATION

16
17 BY MR. WATERSTREET:

18
19 Q. Doctor, this was not asked of you, but have you
20 testified on forensic psychology before?

21 A. Yes, many times.

22 Q. Many times. Have you ever been certified as a
23 forensic psychologist --

24 A. Well, if certification --

25 Q. -- by the court?

1 A. You mean, the court allowing me to testify, yes,
2 sir.

3 Q. Well, no, as a forensic psychologist?

4 A. Certified as a forensic psychologist, specific
5 certification, no, sir.

6 Q. So there have been times in which you have sought to
7 give your forensic opinion, and the court has denied
8 recognizing you as a forensic psychologist?

9 A. I can't think of one, but perhaps there has been.

10 Q. Well, do you remember the Kulka case?

11 A. Kulka?

12 Q. Yes, K-u-l-k-a?

13 A. Yes, I testified in this case.

14 Q. Right. And you were in front of a Macomb County
15 judge?

16 A. Yes, sir.

17 Q. You were called as a defense witness?

18 A. Yes, sir.

19 Q. And the attorney for Ms. Kulka, your client,
20 proffered you to be a qualified forensic psychologist, and
21 the court denied that, correct?

22 A. I don't have any memory of that. I do remember that
23 I testified in that matter, and the court heard my
24 testimony, but I don't have any specific memory of those
25 words.

1 Q. Let's see if I can refresh your memory.

2 And you were hired by Mr. Catalando or Mr.
3 Freers?

4 A. You know, Mr. Waterstreet, I really don't remember.
5 It was years ago. I know it was an insanity case, but I
6 don't remember who hired me. Freers sounds more familiar.

7 Q. Okay. And when you were asked to be qualified as a
8 forensic psychologist, the court says, it would appear
9 that he's qualified as a psychologist. Forensic
10 psychology is not his forte, is that correct?

11 A. Well, if you say that's what the court said, then
12 certainly the court said it.

13 Q. Okay.

14 A. I'm only saying that I don't remember.

15 MR. MARTIN: Do you have a copy of that?

16 MR. WATERSTREET: Yes.

17 THE WITNESS: Yes, I see this, and it's
18 obviously what was said.

19

20 BY MR. WATERSTREET:

21 Q. Okay. And this is after you testified under oath
22 that you really don't have any certification in forensic
23 psychologist, correct?

24 A. I'm not aware that there is certification for
25 forensic psychology in the state of Michigan, but if there

1 is such a certification, which I don't believe there is, I
2 don't have it.

3 Q. And you indicated that when asked if you have any
4 expertise in forensic psychology, you said well, I've
5 studied the terms of criminal responsibility elements of
6 the law on my own. So I haven't had any specific courses
7 concerning that, no, correct?

8 A. If that's what I said, then that's what I said, yes,
9 sir.

10 Q. Are you aware that the Kulka matter was brought up
11 on a habeas, brought in front of Judge Byrd, and he too
12 agreed that you are not a qualified forensic psychologist?

13 A. I'm not aware of that, but I'm sure that happens
14 since you're bringing it to me.

15 Q. Now forensic psychology is -- well, how many
16 times -- how many other times have you been disqualified
17 giving an opinion as a forensic psychologist?

18 A. If I didn't remember this one, I can't answer that
19 question. I don't know.

20 Q. How many times has the court rejected your opinion
21 because it determined that it was bias?

22 A. Bias?

23 Q. Yes.

24 A. I don't know the answer to that question either.
25 Bias frequently comes up in family law cases.

1 Q. Has your opinion ever been rejected by the court
2 because the court determined that your opinion was bias?

3 A. Not to my knowledge.

4 Q. Have you ever been sued because you provided a bias
5 opinion?

6 A. No. I have been sued because the allegation was
7 that I provided an inaccurate opinion and failed to meet
8 standards.

9 Q. All right. Has the court ever outright rejected or
10 refused to consider your opinion because it believed that
11 you were bias or not presenting all the facts to the
12 court?

13 A. Not to my memory.

14 Q. Now you said that you were member of the American
15 Psychological Association?

16 A. Yes, sir.

17 Q. What is required to be a member of the American
18 Psychological Association? You have to be qualified as a
19 forensic expert to be a member of the American
20 Psychological Association?

21 A. No, you have to have a Ph.D. in psychology, and
22 follow ethic guidelines and pay your dues.

23 Q. Right. So anybody who has a Ph.D., whether they are
24 studying Rhesus monkeys or forensic psychologist or a
25 clinical psychologist, you can be member of the American

1 Psychological Association, correct?

2 A. Absolutely.

3 Q. And the American Psychological Association has
4 broken down into more than 50 different divisions --

5 A. Yes.

6 Q. -- of areas of practice?

7 A. That's correct.

8 Q. And it is identified that forensic psychology is a
9 specialized discipline of psychology, correct?

10 A. I believe so.

11 Q. With its own professional organizations, training
12 programs, certification, research journals, and so that as
13 a forensic psychologist, it is the application of science
14 in the profession of psychology to question of issues
15 relating to the law in the legal system, correct?

16 A. Correct.

17 Q. Now you are not a member of the American Association
18 for Forensic Psychologists, are you?

19 A. No, I'm not.

20 Q. And you're not a board certified forensic --
21 criminal forensic psychologist, are you?

22 A. No, I am not.

23 Q. Okay. You're not even trained specifically in
24 forensic psychology, are you?

25 A. Well, trained specifically? I'll answer your

1 question with the use of your words, no.

2 Q. So -- but you have held yourself out as forensic
3 psychologist?

4 A. No. I have held myself out as a psychologist who
5 practices forensic psychology, and I hold myself out as a
6 fully licensed clinical psychologist in the state of
7 Michigan.

8 Q. If I look up under a Google search under CDAM, which
9 is the Criminal Association -- excuse me -- Criminal
10 Defense Attorneys of Michigan, I would not find an
11 advertisement for you claiming to be a forensic
12 psychologist?

13 A. I ran an ad three or four years ago for a year. I
14 don't remember the specifics of the ad.

15 Q. Let me see if I can refresh your memory on that too.

16 A. All right.

17 Q. Does that refresh your memory at all?

18 A. Forensic psychological services, yes, sir. It does
19 refresh my memory. It was a few years ago. I don't
20 remember when.

21 Q. And in that advertisement, you claimed to be able to
22 provide information on all law related mental health
23 issues?

24 A. Yes, sir.

25 Q. Claiming to be a forensic psychologist -- I'm

1 sorry -- you've been practicing more than 38 years, and
2 you're able to provide information on competency, criminal
3 responsibility and sentence mitigation, correct?

4 **A.** Yes, sir. I don't believe in that ad, as I saw it,
5 I called myself a forensic psychologist, but I certainly
6 said I perform forensic psychological services, yes.

7 **Q.** In there, did you say I have been denied being able
8 to testify in the state courts?

9 **A.** Did I put that in the advertisement?

10 **Q.** Yes.

11 **A.** No, sir, I did not.

12 **Q.** And to be certified -- have you ever tried to be
13 certified as a board certified forensic psychologist?

14 **A.** No, sir.

15 **Q.** Because that would require you to not only be
16 trained on the specialized area, but you would be tested
17 on that as well, correct?

18 **A.** Tested as in testimony?

19 **Q.** Tested as in a written examination, oral
20 examination, your opinions and testing styles subject to
21 peer review?

22 **A.** I believe so.

23 **Q.** You chose not to do that?

24 **A.** That's correct.

25 **Q.** And that it would require you to make sure that

1 you're opinions follow the ethical rules of the APA,
2 correct?

3 **A.** Yes.

4 **Q.** That you follow the correct protocol as part of the
5 testing process to be board certified?

6 **A.** Yes, sir.

7 **Q.** That you would provide a fair and balance report?

8 **A.** Yes, sir.

9 **Q.** And that the test that you use or actually testing
10 for the issue that you're seeking to provide testimony on?

11 **A.** Yes, sir.

12 **Q.** And that you would be able to establish that you
13 have had specialized training in forensic psychology,
14 correct?

15 **A.** Yes, sir.

16 **Q.** All of these things would be required of you,
17 correct?

18 **A.** Yes, sir.

19 **Q.** But you chose not to do that?

20 **A.** Well, I have attended numerous --

21 **Q.** It's a straightforward question. You have chosen
22 not to have your -- your practice subjected to peer review
23 to be able to determine that you are, in fact, qualified
24 as a forensic psychologist, correct?

25 **A.** By that organization, that's correct.

1 Q. But there's more than one organization, is there
2 not? There are several?

3 A. Yes, sir.

4 Q. And you never attempted to become certified in any
5 of those, whether it be the American Association of
6 Forensic Psychologists, American Forensic Psychology
7 Board, American Board of Professional Psychology, none of
8 those, correct?

9 A. That's correct.

10 Q. Now you have not been involved in any significant
11 article on forensic psychology in any recognized treatise,
12 have you?

13 A. No, sir, I have not.

14 Q. Have you not engaged in any clinical studies in the
15 area of forensic psychology at all, have you?

16 A. No, sir, I have not.

17 Q. And have you ever been qualified in the Eastern
18 District of Michigan to provide an opinion as a forensic
19 psychologist regarding competency and dangerousness?

20 A. I have testified in federal court a couple of times,
21 but I don't remember that. I would have to probably say
22 no.

23 Q. And frankly doctor, it would be fair to say if I did
24 a Google search of you, you would be recognized as an
25 expert in bedwetting?

1 A. No.

2 Q. All of the articles that you have written concerning
3 that all the videos concerning bedwetting, that's not your
4 area of expertise?

5 A. No. I am a consultant for an organization that does
6 than, and that is frequently misconstrued as you have
7 misconstrued it.

8 Q. Now you have gained a reputation in the legal
9 community, have you not, by judges that you are less than
10 honest in giving a fair and balance opinion?

11 A. I'm not aware of that reputation, sir.

12 Q. Do you remember the matter Schoeder versus Schoeder,
13 Michigan Court of Appeals?

14 A. That was a custody case. That had to be 15 years
15 ago. It went to the court of appeals if I'm not mistaken.

16 Q. It was in 2005?

17 A. 2005?

18 Q. Yes.

19 A. Okay.

20 Q. Do you remember a judge finding particular fault
21 with your methods and your one sided opinion?

22 A. I remember the case. Are you talking about -- it
23 went to appeals if I'm not mistaken.

24 Q. Right.

25 A. Yes, I think that decision was two to one, and the

1 minority opinion alleged that I was bias, et cetera.

2 Q. And she, as a matter of fact, said that in her
3 opinion, the trial court, the lower court, unjustly denied
4 the wife a real opportunity for that -- for his wife to
5 parent the child, correct, because of an one sided opinion
6 of Dr. Lyle Danuloff, the psychologist who evaluated the
7 parties?

8 A. If that's what was written, because I don't have a
9 specific memory.

10 Q. You labeled the wife as delusional?

11 A. Uh-huh.

12 Q. Paranoid?

13 A. Uh-huh.

14 Q. And hypomanic due to her incredible accusation that
15 her husband, the plaintiff had committed adultery and
16 placed her under surveillance?

17 A. It's been a long time Mr. Waterstreet. If that's
18 what I said, then that's what I said.

19 Q. However, there was evidence that was presented to
20 you specifically before you came up with that opinion that
21 showed that you're totally incorrect by claiming for her
22 to be delusional or paranoid, correct?

23 A. I have no memory of that.

24 Q. Let me see if I can refresh the memory.

25 A. All right.

1 Q. The husband admitted that at one time that the wife
2 found a bra in his suitcase after coming back from a
3 business trip, and his explanation to you was that
4 apparently housekeeping must have subsequently placed the
5 garment in the luggage, and you made a determination that
6 you thought that her opinions were unrealistic because her
7 suspicions regarding his infidelity was not based in fact.

8 You testified that she -- as a matter of fact
9 testimony was provided that she found -- discovered
10 unexplained charges for flowers on the credit card
11 belonging to her husband, a woman answered the phone in
12 the plaintiff's hotel room, and another woman often paged
13 him, and the defendant also testified that over one
14 summer, her husband frequently went to a home of an
15 unmarried nurse who administered allergy shots to him on
16 an unpaid basis, and you rejected all these allegations
17 based upon her husband's statement alone, correct?

18 A. Mr. Waterstreet, I have to look at this case within
19 its context. I have very little memory of it. So with
20 that caveat in mind, I will answer it yes to that
21 question.

22 Q. And I'll tell you what? I'll hold the court's
23 finding over your shoulder, and you can read with me --

24 A. I believe you. I believe you. I didn't say I
25 didn't believe you. I said to you that you're picking a

1 particular case which is fine, that I participated in 16
2 years ago. I believe that what you're writing -- what
3 you're reading there is what I wrote. I'm not questioning
4 that.

5 Q. And you rejected all of these allegations based upon
6 the husband's statement alone. You had -- in fact, when
7 the husband had, in fact, secretly taped private
8 conversations with the defendant regarding this emotional
9 charged subject about his infidelity --

10 MR. MARTIN: Your Honor?

11 MR. WATERSTREET: -- and provided tapes to
12 Mr. Danuloff as proof of her instability, and that
13 apparently the allegation that she was under surveillance,
14 in which you found to be delusional and paranoid was true
15 that, in fact, her husband had provided proof that she was
16 not delusional, and that she wasn't paranoid because, in
17 fact, she had been subject to surveillance and recordings
18 by her husband, correct?

19 A. I have no memory of that. I can only tell you what
20 you're reading to me.

21 MR. MARTIN: I object on the basis that I
22 believe Dr. Danuloff testified that he agrees that was his
23 testimony in the case, and rehashing all the details of
24 his opinion of the case is not relevant to the case here.

25 MR. WATERSTREET: Well, it goes to his

1 credibility and his ability to testify in this matter,
2 your Honor. He is claiming to be a forensic psychologist,
3 and then providing a one sided opinion.

4 **THE COURT:** All right. You have covered that
5 territory now?

6 **MR. WATERSTREET:** Well, actually Judge, there
7 are a number of cases that I was going to go through.
8

9 **BY MR. WATERSTREET:**

10 **Q.** As a matter of fact, even the Court found that you
11 engaged in a rather unusual practice that you claim to
12 administer by yourself, a polygraph examination of the
13 husband?

14 **A.** I am not a polygraph expert. How would I
15 possibly --

16 **Q.** That's exactly what the court said.

17 **A.** Well, sir, then the court was in error.

18 **Q.** Okay. Rather you accepted the plaintiff's
19 manipulative proofs and even administered him your own
20 polygraph examination.

21 **A.** One more time sir, that's a judge's opinion in the
22 appeals court?

23 **Q.** Yes.

24 **A.** I have never under oath administered a polygraph
25 test to anyone. With all due respect to the court it was

1 a gross error.

2 **MR. MARTIN:** Your Honor, I would ask for a
3 citation of the case. We don't have --

4 **MR. WATERSTREET:** Yes. Actually I was just
5 about to did that.

6 **MR. MARTIN:** And also this line of
7 questioning is continuing to rehash the same matter
8 opinion that he has given in the past. I think his point
9 has been made.

10 **MR. WATERSTREET:** I'm -- your Honor, they
11 offered him as expert, and I'm voir diring to show that he
12 is not qualified to give this Court an opinion as a
13 forensic psychologist, because he has no qualifications,
14 and he's previously admitted under oath that he is not so
15 qualified in another matter.

16 He's also -- his opinion is bias, and I was asking
17 whether he's aware of fact that he's has a reputation in
18 the legal community of presenting one sided bias opinions,
19 and I imagine the whole reason he is brought here to
20 testify is so they are going to offer his opinion in this
21 matter.

22 So I think the Court should be made well aware of
23 the serial number of times in which he has engaged in this
24 type of behavior.

25 **THE COURT:** All right. I think I'll direct

1 you to save the rest of your case examples until you have
2 your full cross examination if there is going to be a full
3 cross examination of the witness. In the meantime though,
4 you should probably give the citation.

5 **MR. WATERSTREET:** I will give the citation.
6 Schoeder versus Schoeder, Michigan Court of Appeals Number
7 263422. It's found at 2005 Westlaw 3304569.

8
9 **BY MR. WATERSTREET:**

10 **Q.** As a clinical psychologist, not board certified in
11 forensic psychology, you're aware that different tests are
12 provided to individuals for forensic examinations versus
13 clinical examinations?

14 **A.** Well, my understanding of this case is --

15 **Q.** I'm not asking about this case yet.

16 **A.** Okay. Question again please?

17 **Q.** Question is, the type of tests that are conducted in
18 a clinical setting versus a forensic setting are different
19 types of tests, correct?

20 **A.** The MMPI-2 is an instrument that is used both in
21 clinical and forensic settings.

22 **Q.** And since -- I imagine since you are not board
23 certified, are you familiar with the latest literature
24 concerning how forensic examinations using MMPI should not
25 be used in a forensic examination because they are

1 completely different standards than in a clinical setting?

2 A. No, sir, I'm not aware of that.

3 Q. So you would not be familiar with those?

4 A. I'm not familiar with that, no, sir.

5 Q. You said that you were, in fact, and acknowledged
6 being a member of the American Psychological Association,
7 correct?

8 A. Yes, sir, currently a lifetime member, but I am
9 still a member.

10 Q. And they issue journaled articles?

11 A. Many journals.

12 Q. Are you familiar with the journal article entitled
13 The Use and Misuse of Psychological Testing?

14 A. Yes, sir.

15 Q. Okay. And that in that article it said,
16 psychologists, such as yourself, clinical psychologist,
17 must keep in mind that the standard psychological test,
18 such as the MMPI-2, were not developed for forensic
19 purposes. Are you familiar with that?

20 A. I'm not familiar with that statement. I am quite
21 familiar with fact that the MMPI-2 other forms of it have
22 been used extensively in forensic work.

23 Q. Other forms, absolutely correct, but not the MMPI-2?

24 A. MMPI-2 and other forms, absolutely.

25 Q. Because simply put, most psychologists, such as

1 yourself --

2 **A.** Uh-huh.

3 **Q.** -- lack the adequate training to conduct forensic
4 examinations. Are you familiar with that article?

5 **A.** I'm not familiar with those words, no. It's been
6 awhile since I read it, but since you are reading directly
7 from the article, I'm assuming it is in there.

8 **Q.** As a result, they fail to differentiate the role of
9 a forensic examiner from that of a clinician. In turn,
10 they are likely to adopt procedures familiar to them, and
11 you indicated you're a fully licensed clinical
12 psychologist?

13 **A.** That's correct.

14 **Q.** And most have been in part due to the graduate
15 training and their ongoing clinical practice. In too many
16 cases, this pattern results in indiscriminate and
17 thoughtless use of testing, and also results in opinions
18 of legal matters that are totally irrelevant to the tested
19 data, correct?

20 **A.** If that's what the article says, yes, sir.

21 **Q.** And you're also familiar with an another article
22 just written in July by a criminal defense attorney on the
23 issue of MMPI, indicating that MMPI is a broad band test
24 for general diagnosis.

25 **A.** Did you say broad band, b-a-n-d?

1 Q. Yes, b-a-n-d. Am I correct?

2 A. I don't know that I would call it a broad band test.
3 I don't know what the author meant, but it was extensively
4 accepted across a variety of standards and across a
5 variety of courtrooms in the country.

6 Q. It is my understanding in his particular case you
7 only chose to do one test?

8 A. That's correct.

9 Q. And that was the MMPI-2?

10 A. That is correct.

11 Q. Are you also familiar as a result of in the manual
12 for administration and scoring of the MMPI-2, that the
13 MMPI-2 was not specifically designed for the purposes of
14 evaluating individuals in the context of custodial parent
15 risk assessments, suitability for parole, nor to assess
16 whether someone will succeed in the community, supervised
17 release program or -- nor for the determination of whether
18 the individual will commit a crime if released?

19 A. I'm not aware of those words, but since you are,
20 then I'm assuming those words exist, and I guess that's
21 all I can say to answer that. Yes. You read the words.
22 So somebody said that.

23 Q. And there is a whole host of other tests that would
24 have been more specific as to what the -- what you were
25 testing for, is there not?

1 **A.** No, sir. I was testing -- I was evaluating the
2 defendant in terms of his current psychological and
3 emotional status, relevant to his suitability for release
4 from custody, and that, in my opinion, required a clinical
5 assessment involving the methods that I used in my report
6 and the MMPI-2.

7 **Q.** Okay. But you -- because -- despite the fact that
8 you were hired to say whether he is eligible or you
9 thought he was suitable for release, you rendered an
10 opinion regarding his competency, did you not?

11 **A.** I was asked to render an opinion about that by
12 defense, yes, sir.

13 **Q.** So you were asked to do both?

14 **A.** Initially, I was asked to do the evaluation that I
15 just described to you. In the course of the evaluation,
16 defense suggested to me that the government was motioning
17 for a competency hearing -- can I continue?

18 **Q.** Yes.

19 **A.** It was motioning for a competency hearing, and
20 defense said to me, on the basis of my work with the
21 defendant, could I offer an opinion regarding his
22 competency, which I translated to, of course, competency
23 skills, did he have competency skills, and on the basis of
24 my work with the defendant, I opined that I thought he was
25 competent, yes, sir.

1 Q. But to come to that opinion, what test did you
2 conduct?

3 A. Straight clinical work. I asked him specific
4 questions about his competency skills: Was he aware of
5 charges against him? Was he aware of the judge's
6 function? Was he aware of the prosecuting attorney,
7 defense attorney, a jury? Was he able to relate in a
8 meaningful way with his attorney, et cetera, et cetera,
9 and when he answered all of those, which I believe was in
10 the affirmative, which is the essence of a competency
11 examination, I offered my opinion to defense.

12 Q. But as an untrained, unqualified, uncertified
13 forensic psychologist, were you aware that there is a
14 specific test that forensic psychologists do, in fact,
15 conduct --

16 A. There are several tests like that, yes.

17 Q. Let me finish my question, please.

18 A. My --

19 Q. Let me finish my question, please.

20 A. I'm sorry.

21 Q. There is a specific test that trained forensic
22 psychologists employ in trying to determine somebody's
23 competency to stand trial. Are you aware of that?

24 A. I'm aware that tests like that exists, yes, sir.

25 Q. Can you name that test?

1 A. No, I cannot.

2 Q. Have you ever heard of the examination of Competency
3 to Stand Trial Revised, the ECST-R?

4 A. Yes, I have it many my home.

5 Q. You didn't decide to use it?

6 A. No, because the essence of that instrument is an
7 instrument addresses --

8 Q. Simple yes or no.

9 A. No.

10 Q. Even though you were asked? Even though you were
11 asked by defense to give an opinion on competency, you
12 chose not to give the one test that is specifically
13 designed to examine competency to stand trial, is that
14 correct, yes or no?

15 A. Yes, that's correct.

16 Q. You chose not to give an intelligence test to see if
17 the defendant had the correct mental aptitude to be able
18 to even perform the MMPI-2, correct?

19 A. No, I interviewed the --

20 Q. I appreciate you wanting to answer a different
21 question. My question was, you did not even employ an
22 intelligence test to see if he met the requirements to
23 even employ the MMPI?

24 A. That's correct.

25 **MR. WATERSTREET:** Now I guess the rest, if

1 the Court is to going to qualify him as a forensic
2 psychologist to give an opinion, I have a number of other
3 questions concerning the ultimate opinion that this
4 individual gave?

5 **THE COURT:** Okay. Why don't I hear from
6 Mr. Martin.

7 **MR. MARTIN:** Could I ask some follow up
8 questions?

9 **THE COURT:** Yes.

10 **MR. MARTIN:** And to be clear, we are asking
11 him to qualified in the field of psychology and not
12 psychiatry for the record.

13
14 **VOIR DIRE CROSS EXAMINATION**

15
16 **BY MR. MARTIN:**

17
18 **Q.** Dr. Danuloff, have you ever testified as a forensic
19 expert in court?

20 **A.** I have not put myself forward as a forensic expert
21 no, sir. I have put myself forward as answering questions
22 regarding forensic, but I have never put myself forward as
23 a certified forensic psychologist.

24 **Q.** Is it common for a clinical psychologist to speak to
25 forensic issues?

1 **A.** Yes, sir, it is.

2 **Q.** Could you explain why that is so?

3 **A.** Clinical psychologists in certain circumstances are
4 asked to provide their skills in areas that are relevant
5 to clinical psychology, and when those areas are covered
6 or examined, in my experience courts have then made
7 determinations on the basis on that.

8 In this case this was a matter of my assessing
9 the defendant in terms of his current psychological and
10 emotional status, relative to the Court's determination of
11 whether or not he should be released from custody. I
12 construe that as a clinical issue and provided --
13 approached it as a clinical issue.

14 **Q.** Would you also say that the matter of competency has
15 an element of clinical psychology that could speak to that
16 issue as well?

17 **A.** Yes, sir, as long as the psychologist addresses the
18 issue of competency skills, and whether or not the
19 individual in question is of a state of mind that those
20 competency skills are not compromise.

21 **Q.** The government noted that you were not certified as
22 a forensic psychologist. Why is it that you've chosen not
23 to?

24 **A.** I never saw the absolute relevance of it in terms of
25 what the requirements are versus what a clinical

1 psychologist does, and what I have done in the past, and
2 the many, many, many, times that my testimony has been
3 accepted in courtrooms in the state of Michigan.

4 Q. The specific case that the government brought out
5 Schoeder versus Schoeder, that was not a criminal case?

6 A. That was a custody case, and I remember now who the
7 judge was that rendered that opinion, and it was a two to
8 one opinion.

9 Q. The issue of training in forensic psychology, you do
10 have some training?

11 A. Yes, I've attended numerous workshops, et cetera in
12 the application of psychological principles to issues of
13 law, yes, and in particular criminal law, criminal
14 responsibility, competency to stand trial, pre-sentencing
15 evaluations, et cetera.

16 Q. Could you go through some of the recent trainings
17 that you've gone through?

18 A. Oh, geez, it's been awhile. I can't come up with a
19 list. I apologize.

20 Q. That's okay.

21 A. It has not been recently.

22 Q. Your work in forensic psychology, you have done work
23 with criminal responsibility?

24 A. Yes.

25 Q. And competency before?

1 A. Yes, sir.

2 Q. Sentencing mitigation?

3 A. Yes, sir.

4 Q. You have done pre-sentence evaluations?

5 A. Yes.

6 Q. That's been in state court and federal court or just
7 state court?

8 A. State court, mostly in Macomb County. I did a great
9 deal of work for the late Lido Bucci who has been gone for
10 quite awhile now.

11 Q. You are familiar with the American Psychiatric
12 Association I believe it is, their specialty guidelines?

13 A. The American Psychological Association. I'm not
14 familiar with the American Psychiatric --

15 Q. Excuse me. American Psychological Association has
16 specialty guidelines on forensic psychology?

17 A. That's correct.

18 Q. Are you familiar with those?

19 A. Yes, sir.

20 Q. In terms of talking about the MMPI, is there a
21 reason why you chose that test?

22 A. Yes, because in my clinical opinion over the years,
23 it is well-documented, well-validated instrument that
24 provides an assessment of an individual's current ongoing
25 psychological functioning, and any vulnerability that

1 individual might have, and I'm frankly stunned at opposing
2 counsel's evidence that he brought to me, although I'm
3 sure it exists, I rely on the MMPI. I use the MMPI, and
4 I've testified in court where the MMPI has been part of
5 what I've done, and I believe it's always been accepted.
6 I might have forgotten one, but to my experience, it has
7 always been offered and accepted in the Court of Law.

8 Q. Was that the sole basis of your evaluation of Mr.
9 Rayyan?

10 A. Absolutely not.

11 Q. What other things do you normally look at if you're
12 doing this type of evaluation?

13 A. Well in direct reference to those guidelines that
14 you mentioned in order for a thorough and competent
15 evaluation to occur, a psychologist has to take
16 information from a variety of sources, psychological
17 testing, if appropriate, direct examination of the
18 individual, and any kind of auxiliary information that is
19 relevant to the clinical question.

20 So in this matter I interviewed his father and
21 stepmother, and I reviewed various documents that I
22 mentioned in my report, and then, of course, saw the
23 defendants on two separate occasions.

24 Q. In regards to competency, I believe defense asked
25 you when the government made the initial request for -- to

1 be sent for a psychiatric evaluation, for you to offer
2 your opinion, not a full report on whether you thought he
3 was competent?

4 A. Yes.

5 Q. Why is it that you did not do any testing at that
6 point?

7 A. Because the defendant showed me clinically that he
8 had competency skills, skills that I just mentioned to you
9 and, in fact, when defense asked me for that
10 determination, in my second interview, I asked those
11 questions, and the defendant's answers were thorough and
12 complete.

13 Q. What were some of the questions that you went
14 through with him?

15 A. Are you aware of charges against you? Are you aware
16 of the role of the defense attorney? Are you aware of the
17 role of the prosecuting attorney? Are you aware of what a
18 verdict means? Are you aware of what a plea means? Are
19 you aware of the role of the judge? Are you aware of the
20 role of a jury?

21 Q. And what was your sense of Mr. Rayyan?

22 A. My sense of him was that he was competent and
23 confident in the answering those questions.

24 MR. WATERSTREET: Your Honor, is he giving
25 opinion now, because I'm not sure if he's tendered and the

1 Court found that he is qualified to render an opinion.

2 **MR. MARTIN:** I have one other question on
3 just the testing that's not going to ask about his
4 opinion.

5 **THE COURT:** Go ahead.

6

7 **BY MR. MARTIN:**

8 **Q.** In terms of the intelligence test, you said you
9 didn't see the need to issue -- or you didn't give an
10 intelligence test?

11 **A.** Correct.

12 **Q.** Why is that?

13 **A.** There was nothing presented to me that indicated
14 that intelligence was an issue. Had the instrument been
15 such that he showed an inability to understand the
16 questions which are written, if I'm not mistaken on a
17 sixth or seventh grade level, then I would have done
18 something to reassess his intellectual abilities.

19 **MR. MARTIN:** I have no further questions in
20 terms of his asking about his qualifications.

21 **THE COURT:** All right. You're asking to
22 elicit opinion testimony from this witness on both
23 competency and the safety of potential release?

24 **MR. MARTIN:** Yes, your Honor.

25 **THE COURT:** All right. Did you have any

1 other argument, either side?

2 **MR. MARTIN:** Well, your Honor, I believe Dr.
3 Danuloff has been working since 1972 as a clinical
4 psychologist, and he's also done forensic work for a
5 number of courts, and qualified by a number of courts to
6 give that testimony. I think his comments about not being
7 certified in forensic, your Honor may take that into
8 account when you're evaluating his opinion, but I do think
9 he's qualified to give an opinion of Mr. Rayyan's current
10 psychological state.

11 **THE COURT:** All right. Anything
12 Mr. Waterstreet from the government?

13 **MR. WATERSTREET:** Your Honor, I have
14 additional questions of him.

15 Your Honor, I don't believe he has established
16 that forensic psychology is the using psychology and
17 presented in a court case in a legal proceedings. By the
18 defendant's own statements, previous testimony and today,
19 he's indicated to the Court that he is not qualified.

20 The fact that he may have gotten qualified in the
21 past, because perhaps it was not challenged, the parties
22 agreed to it or whatever, does not establish his
23 competency at this time, and his expertise in the area.

24 It's their witness. It's their burden to show
25 that he is qualified, and frankly, your Honor, I think

1 they have fallen way short of establishing that.

2 **THE COURT:** All right. Well, there are two
3 issues that the defense counsel has sought to have this
4 witness address: One, is the competency of the defendant
5 as it relates to that -- well, and other, of course, is
6 the propriety of a release with conditions as a matter of
7 a bond determination.

8 As it relates to the question of competency, the
9 testimony here is obviously of limited value, given the
10 witness' -- given that the witness is not a board
11 certified forensic psychologist. He is -- had a --
12 there's obviously some question about the testing that
13 took place as part of the preparation of this hearing, and
14 yet, the showing that is required for the Court to assess
15 this motion for referral for testing that's been filed by
16 the government is a very modest showing.

17 The Court is directed to consider the statements
18 of defense counsel based on the interaction between
19 defense counsel and the defendant, directed to consider I
20 think the interaction between the defendant and others
21 that may be occurring at any given time to assess
22 competency.

23 This witness had interaction with the defendant in
24 his interview. Whether the professional opinion of
25 competency is taken as such by the Court or not, whether

1 his limitations as an expert by knowledge, skill,
2 experience, training or education is sufficient for the
3 Court to consider his opinion testimony as a general
4 proposition or not, I don't think it comes into
5 significant play for the Court's own assessment of the
6 government's motion, and so I will allow the parties to
7 explore the interaction why the witness believes the
8 defendant is not in need of additional testing as it
9 relates to his competency.

10 And as it relates to the potential risk posed by
11 the defendant if released, the Court is persuaded that the
12 witness lacks the training and educational background to
13 offer opinion testimony on that issue, and so I'll limit
14 the testimony he does offer here today to the question of
15 competency, and not to the question of potential risk to
16 the safety of the community that he may or may not pose.

17 So you want to address questions?

18 **MR. MARTIN:** Yes, your Honor.

19 **THE COURT:** Go ahead.

20 **MR. MARTIN:** Thank you.

21
22 **DIRECT EXAMINATION CONTINUED**

23
24 **BY MR. MARTIN:**
25

1 Q. Dr. Danuloff, can you go through the things that you
2 did in terms of looking defendants and evaluating him
3 psychologically?

4 A. I'm confused now. Are you asking me about
5 competency or general work?

6 Q. Well, did the work that you did in terms of when the
7 defense first asked you evaluate Mr. Rayyan for his
8 psychological state, could you go through the things that
9 contributed to your eventual opinion in terms of his
10 competency? Did you -- met with --

11 A. I met with him on two occasions.

12 Q. Where did you meet with him?

13 A. In the Wayne County Jail. I met with him for two
14 clinical interviews, approximately 2.25 hours, something
15 like that, and psychological testing was done with the
16 MMPI-2. I interviewed his mother (sic) and stepmother in
17 my office and examined various documents that are
18 mentioned in my report.

19 Q. In particular, defense asked you to look at the
20 statements that the government had put in the initial
21 complaint in this case --

22 A. Yes.

23 Q. -- that Mr. Rayyan had made to an undercover agent?

24 A. Yes.

25 Q. And also to look at the statements that's been used

1 at the initial detention hearing in this case?

2 A. Yes, sir.

3 Q. When you met with Mr. Rayyan, did you address those
4 messages between him and the undercover agent?

5 A. Yes.

6 Q. You also discussed his drug usage?

7 A. Yes, sir, I did.

8 Q. You went over his family background?

9 A. I did.

10 Q. And education?

11 A. I did.

12 Q. What was your -- what was your take away from that,
13 and why he might have made these statements that have been
14 used in the initial complaint as a basis for to the
15 competency request?

16 MR. WATERSTREET: Is this only for
17 competency, whether he understands the nature of the
18 charges? I think the doctor has already gone over that,
19 and the Court accepted that. I don't know where this is
20 going to, unless perhaps they're trying to get in
21 something the Court said that he's not qualified to
22 testify about.

23 MR. MARTIN: If I may, your Honor, the motion
24 for psychiatric testing makes numerous mention of the
25 comments that Mr. Rayyan made to undercover agent. It

1 also goes through these ideas with him having heard
2 voices. I think that's relevant for Dr. Danuloff to
3 mention and discuss.

4 **THE COURT:** Go ahead.

5
6 **BY MR. MARTIN:**

7 **Q.** Dr. Danuloff, could you comment on what your opinion
8 is in regards to the -- the comments made by Mr. Rayyan to
9 the undercover?

10 **A.** Well, the comments that he made to the undercover
11 agent were egregious and horrendous, and taking on their
12 face, just on their face, they are very, very disturbing.
13 You take the comments and put them within the context of
14 those comments, the context being Mr. Rayyan's state of
15 mind at the time, the history of his life, and in
16 particular the history of a very lonely isolated young man
17 who has had absolutely no relationship with women
18 whatsoever, and take into consideration essentially a
19 negative history for any acts of violence. He did have a
20 fight with his brother at one point. No history of any
21 attempts of radicalization or any attempts or any type of
22 violent behavior, and his extensive use of marijuana since
23 18 years of age.

24 When I put all of those findings together, and I
25 put Mr. Rayyan's comments to the undercover in that

1 context, it is my view that those horrendous comments were
2 made in his effort to maintain the affection and the
3 contact from the, quote, girl, the female who was the FBI
4 agent, who was communicating to him, both sometimes by
5 telephone and mostly by text, and as I examined Mr.
6 Rayyan, it became very clear to me that what we had here
7 was a drug adol young man who was very, very shy, who's
8 living his life in a very isolated way working for the
9 family pizzeria for 60-70 hours a week, had no successful
10 contact with a female, and who, upon getting contact,
11 especially with the first female, was smitten by the
12 contact, and continued to do what he did in order to
13 maintain her statements of affection and statements of
14 love -- both contacts actually.

15 I remember asking the defendant well, what was
16 going to happen here? What was going to happen when it
17 was pushed comes to shove -- and that I think the second
18 contact's name was Ghaada -- what was going to happen if
19 you ever met her and she said it is time for us to do
20 jihad, and Mr. Rayyan said in a way that I believe was
21 genuine, I wouldn't have done it. I never wanted to do
22 it. What I wanted to do was to convince her that I
23 reliable and safe so I could save her from what she was
24 doing, and so that we could marry, and I could show her
25 the world in a way so that she could -- she would no

1 longer be so bent on -- this is my word -- so bent on the
2 destruction that she spoke about.

3 When I put all of this in the clinical context,
4 the horrendous nature of his comments, and they were
5 horrendous, it changes the nature of the context of those
6 comments.

7 Q. You mentioned just to clarify --

8 MR. WATERSTREET: Your Honor, for what
9 purpose? Is this for the purpose of deciding his
10 competency?

11 THE WITNESS: Are you asking me, sir?

12 MR. WATERSTREET: Yes.

13 THE WITNESS: I'm answering defense's
14 question. It's up to attorneys -- I think the Court to
15 determine where I'm going with this.

16 MR. WATERSTREET: That's the question, your
17 Honor. Is this for competency, or is this an attempt to
18 try to get in the information this Court said he is not
19 qualified to testify about?

20 MR. MARTIN: Your Honor, I am not trying to
21 get as an attempt to subvert your Honor's ruling. I do
22 believe all of these comments are very relevant to at
23 least the way the government has presented its competency
24 request.

25 THE COURT: The interaction again between the

1 defendant and this witness, and the manner of his
2 responses to these questions might lead -- might lead to a
3 consideration of the bond release conditions that are
4 possible to set, but they are offered here not for that
5 purpose. They are offered for the Court's ability to
6 assess whether he is oriented to the case in a fashion
7 that would lead to a competency.

8 **MR. WATERSTREET:** Thank you.

9 **THE COURT:** Go ahead.

10
11 **BY MR. MARTIN:**

12 **Q.** Dr. Danuloff, there's been comments that defendant
13 made about hearing voices, and he made these comments to
14 the undercover. Did you address those in any way during
15 your meeting with him and your review of his file with the
16 family?

17 **A.** Yes.

18 **Q.** What opinion can you give on that?

19 **A.** He reported to me those were his efforts to gain
20 more contact and securance from the girl that he was
21 talking to, and that he was not hallucinatory in any way,
22 but wanted to continue to gain more and more of her
23 attention.

24 **Q.** Dr. Danuloff, some of these things that he discussed
25 about these voices that he wants to shoot up a church,

1 behead, skin people, those don't give rise of concern to
2 you?

3 A. If you just listen to the comments without any
4 context, absolutely they give rise to concern to me, but
5 within the context of my examination, my view of them in
6 terms of the seriousness and what they mean is diminished.

7 Q. Can you go through some of the things that you think
8 diminished that concern?

9 A. He has no history to my knowledge of any violence
10 towards society or any other person. There is a fight
11 that he had with his brother apparently. There is no
12 evidence in the family in my interview with the dad and
13 step mom and with the defendant of any efforts of
14 radicalization. I asked him with regards to
15 radicalization, why did you start looking at these
16 websites in the first place? What was the draw, and he
17 said that he found them interesting, and I pursued that a
18 little bit. What do you mean you found it interesting?
19 They are pretty horrendous, and he said, yes, they are,
20 and I found them interesting. It was fascinating that
21 this kind of thing could happen in the world.

22 It was also my opinion that during the time that
23 he was examining some of these, he was also under the
24 influence of excessive amount of marijuana that he was
25 smoking. So I wanted to know about that, and I wanted to

1 know in particular did these horrendous websites generate
2 desires toward radicalization, desires toward taking out
3 violence against society, and in terms of my careful
4 examination of him, I believe that they were simply that.
5 He was really interested.

6 This is not a 21 year old adult. Mr. Rayyan,
7 unfortunately, psychologically is still an adolescent and
8 his judgment is that of an adolescent, compromised by his
9 life experience, and compromised by his excessive use of
10 marijuana since he was 18 years of age.

11 Q. To clarify, you also mentioned earlier that you said
12 that there were two women that he mentioned, that he
13 discussed with you that he was talking to?

14 A. Yes.

15 Q. Could you go into that a little bit more? There was
16 a woman from --

17 A. He told me that there was a woman from Pakistan, a
18 Pakistani woman who he -- first contacted him, and he said
19 that he immediately fell in love with her, and that he had
20 all kinds of thoughts and fantasies that they were going
21 to have a life together.

22 As I remember, he asserted they were going to
23 meet in Cleveland, and he may have even asked his dad if
24 they could go to Cleveland to meet her, and upon that
25 question, has I understand, the contact with her -- and I

1 think her name was Ghaada or something like that --
2 immediately ended, and he was devastated at that loss,
3 because he thought again he found answers to his lonely
4 life with relations to females.

5 Q. How is it possible that someone can make it to 21
6 without having a relationship with a girl?

7 A. Well, that's a very good question. He's painfully
8 shy. While he was somewhat active in high school in
9 sports, he didn't hang around with girls, and his -- he
10 grew up in a very -- a fairly orthodox Muslim family, and
11 according to Muslim tradition and culture, you don't
12 pursue a girl unless you're interested in marriage. So it
13 made sense to me, and again from the time -- I don't
14 remember when his dad opened the pizzeria -- I think Mr.
15 Rayyan was in his senior year of high school, maybe junior
16 year -- his life was spent going to school and working at
17 pizzeria seven days a week.

18 Q. Sometime has past between the time of these comments
19 that the government has raised, the comments that he made
20 to the undercover, and between the time you interviewed
21 and evaluated Mr. Rayyan. Do you believe that his mental
22 state changed from the time he initially made these
23 comments and when you interviewed him?

24 A. No, sir. If, in fact, his mental state at the time
25 that he made those comments were as deteriorated -- in all

1 due respect as the government is trying to show -- I don't
2 know how clinically Mr. Rayyan could have recovered and
3 basically function the way he did with me in the
4 interviews and in the onerous environment of a jail.

5 Q. When he say that, did you talk to him about his
6 experience in the jail?

7 A. Yes. What do you do? I read. I don't get in any
8 trouble. I did not talk to the jail people about that,
9 but I know that he was on suicidal watch at first.
10 Perhaps defense told me that he was not on any suicidal
11 watch and there didn't seem to be any special precautions.

12 Q. In terms of Mr. Rayyan understanding the case
13 against him, what was, in your interactions was him, his
14 understanding of this case?

15 A. Well, he was thoroughly familiar with the events
16 that took place that led to the original state charges.
17 He took full and total responsibility for them. He denied
18 any intent whatsoever and asserted that he had some
19 misunderstanding of the concealed carry law that was
20 involved in the initial charges.

21 Again, he was deeply ashamed of what happened,
22 and deeply ashamed that he brought this kind of shame to
23 his family. He said that he spoke with Mr. Shanker in
24 very productive ways, and Mr. Shanker understood him, and
25 that he understood Mr. Shanker, and he was aware of why he

1 was mandated -- or into the Wayne County Jail, and that
2 there were issues about terms of the condition of his
3 release by virtue of not so much the marijuana charge and
4 gun charge, but because of the texts and communication
5 with the two girls, and he was deeply ashamed that he was
6 taken in that way.

7 Q. In terms of his ability to assist his defense, do
8 you see a concern there?

9 A. On the basis of his performances with me, without
10 taking into consideration comments from Mr. Shanker that
11 he and client seemed to get along well, on the basis of
12 his clinical presentation to me, I saw no evidence that
13 Mr. Rayyan's competency is an issue. He did not appear to
14 be suffering from an ongoing psychological disorder that
15 would compromise his competency skills, and he manifested
16 those competency skills to me in relation to the questions
17 that I asked.

18 MR. MARTIN: I have no further questions.

19 THE COURT: All right. Thank you.

20 Mr. Waterstreet?

21 MR. WATERSTREET: Thank you, your Honor.

22
23 CROSS EXAMINATION

24
25 BY MR. WATERSTREET:

1 Q. Now that you have given your opinion concerning this
2 matter, I do want to get into the situations on which you
3 have knowingly ignored facts in the past, and as a matter
4 of fact, you have been called out on that on more than one
5 occasion by the courts.

6 Are you familiar with People versus McCall?

7 A. McCall?

8 Q. M-c-C-a-l-l.

9 A. No, sir, I am not.

10 Q. Found at 2005 Westlaw 2679689. You were called to
11 testify on behalf of a person who was charged with murder.

12 A. I'm sorry McCall, M-c-C-a-l-l?

13 Q. Yes. This is a man who beat his girlfriend
14 senseless two weeks before she was murdered, and you were
15 called in to testify that he should really be convicted of
16 manslaughter because he had no prior violent acts towards
17 her?

18 A. I have no memory of that, sir. I am sure you have
19 the documents.

20 Q. Let's see if I can refresh your memory.

21 A. Sure.

22 MR. MARTIN: Your Honor, I would object to
23 marching through another litany of cases that Dr. Danuloff
24 testified to in the past. I believe it is fair to
25 question him on testimony that he's already given with

1 regard to Mr. Rayyan, but in terms of his what he has done
2 in the past as to his qualifications, your Honor has ruled
3 on that matter.

4 **MR. WATERSTREET:** It goes directly to his
5 credibility and willingness for the Court to accept
6 whatever he testifies to.

7 **THE COURT:** I'll allow you to engage in that
8 in a limited way I trust.

9 **MR. WATERSTREET:** Your Honor, if he
10 remembered these, we would be able to move through this a
11 lot quicker, but I apologize.

12 **THE COURT:** Okay.

13
14 **BY MR. WATERSTREET:**

15 **Q.** You are Dr. Lyle Danuloff, clinical psychologist who
16 evaluated the defendant?

17 **A.** Can I hold this?

18 **Q.** Are you not?

19 **A.** I am.

20 **Q.** Okay.

21 **A.** This is an unpublished opinion from the court.

22 **Q.** Yes, it is an unpublished opinion, correct. Are you
23 familiar with it now?

24 **A.** No, sir, I'm not. McCall versus State of Michigan?
25 With all due respect, sir, no, I don't remember this case.

1 Q. You don't remember a time in which you were
2 challenged for intentionally forgetting information that
3 was given to you, and testifying to the contrary?

4 A. Intentionally, no, sir, I do not.

5 Q. Okay. Well, in this particular case is it not true
6 that you were hired by the defense attorney to try to
7 convince the jury that they had no prior physical -- no
8 prior violent past?

9 A. Mr. Waterstreet, I don't know how many times I can
10 say this to you, I don't remember the case.

11 **MR. WATERSTREET:** I'll ask the Court to take
12 judicial notice of it, and I'll just read in the facts to
13 the Court.

14
15 **BY MR. WATERSTREET:**

16 Q. In this case you testified based solely on what the
17 defendant told you, that he did not have a violent
18 relationship, there was no prior domestic abuse, and the
19 police had never been called as a result of that abuse.
20 Yet, despite that fact, you had been presented with
21 evidence that a month earlier, the police had been called
22 to the residence, the defendant had beaten the victim and
23 threatened to kill her.

24 Introduced into evidence was a 911 call, and
25 pictures of the victim lying on the stretcher, being

1 treated by emergency personnel, having a laceration of her
2 eyes, bruising and redness on her cheeks and forehead, a
3 bite mark on her breast, and photos of blood stain scene
4 of the beating, and eventually this matter was appealed in
5 a habeas to the Eastern District of Michigan, and that's
6 2010 Westlaw 2287435.

7 A. That was five years ago then roughly. I don't
8 remember the case.

9 Q. And Judge Battani provided additional facts that you
10 did not rely -- that you ignored as part of relying solely
11 on what the defendant said. Are you aware of that?

12 A. No, sir. I'm racking my brain. I don't have any
13 memory of that case.

14 Q. And upholding that conviction she revealed
15 additional facts that were ignored by you that he, in
16 fact, did kill his girlfriend October 4th, and the victim
17 was lying on a stretcher, and there were bite marks on her
18 breasts. You don't remember that?

19 A. No, sir. I apologize. I have no memory.

20 Q. Do you remember Deal versus Danuloff?

21 A. I do.

22 Q. That's a published opinion, 242 Michigan Appeals at
23 120, and that was a situation where you were called in as
24 clinical psychologist to render an opinion to the court as
25 to which parent should the children be placed with,

1 whether they be placed with the father or the mother,
2 correct?

3 A. That's correct.

4 Q. And in that situation --

5 MR. MARTIN: Your Honor, if he --

6 MR. WATERSTREET: -- you ignored evidence
7 that was presented to you in making in that determination?

8 A. No, sir.

9
10 BY MR. WATERSTREET:

11 Q. Those were the allegations, were they not?

12 A. Those are the allegations. I don't believe --

13 THE COURT: Hold on.

14 MR. MARTIN: I object him limiting it to
15 criminal cases where Dr. Danuloff testified as being
16 relevant. A parent parental custody matter is not
17 relevant to --

18 MR. WATERSTREET: It goes to his credibility,
19 your Honor?

20 THE COURT: The Court will overrule the
21 objection.

22
23 BY MR. WATERSTREET:

24 Q. And that the evidence -- at least the finding of the
25 court was that evidence had been provided by the maternal

1 grandparents. Before you made your recommendation, and
2 before you made the recommendation that the children
3 should be placed in the father's care solely, was that
4 prior information that the father had a history of sexual
5 deviancy, information was brought that the father had been
6 sexually abusing the children, and having been provided
7 that information, you still recommended custody to the
8 father, and it wasn't just based upon their claims, the
9 father thereafter plead guilty, and admitted to engaging
10 in sexual abuse of the children, taking indecent liberty
11 with the children, and other charges involving minors, and
12 he was sentenced the to prison.

13 Isn't that the facts of that case?

14 A. I became aware of that later on as the Deal family
15 brought suit, yes. I was not aware of that prior to that.

16 Q. But that's not what the court found. The court
17 found the reason you were able avoid losing your license,
18 being sued into oblivion was the fact the court made
19 decision that because you were hired by the court, you
20 were given immunity, correct?

21 A. It was a case of first impression, yes, sir.

22 Q. Are you familiar with DiJulie versus the city of
23 Taylor?

24 A. Yes, sir.

25 Q. Okay. And wasn't that a situation where a police

1 officer from the Taylor Police Department had been
2 originally been placed on medical leave because of a
3 shoulder problem, and then eventually he started to hear
4 voices and started to have delusions, and was sent to
5 another doctor, and that other doctor found them to be --
6 that would cause him not to be able to return to work. As
7 a matter of fact, he even said that he had voices urging
8 him to hurt himself, and that he wanted to -- visions of
9 viscerating or cutting the guts out of the police chief
10 and others in the police department. And then you were
11 brought in later and said that he was perfectly okay to
12 return to work, is that correct?

13 A. Well, the way you described the case is quite
14 different than my memory of the case.

15 Q. Well, we can find that case at 2014 Westlaw 7338890.

16 And there was even testimony given in that case
17 in which you went up to the current police chief, and said
18 that this is the angriest son of a I ever met in my life,
19 but if you tell anyone I said anything that, I will denied
20 that?

21 A. I never said that to the chief. I did say to the
22 chief, if I may, that yes, he's angry, but that anger did
23 not make him dangerous nor did that anger make him unfit
24 to be rehired. That case was --

25 Q. Are you aware that the court -- I know you're not a

1 forensic psychologist, so bear with me here.

2 When a court states that the plaintiff -- and
3 the plaintiff in this case was Taylor Police Officer
4 seeking to get his job back -- provided no evidence
5 whatever, which means they provided no evidence, basically
6 totally ignoring your opinion, because they believed it to
7 be bias, did not engage in any analysis of your
8 credibility versus the other, and just basically said, I'm
9 not even going to consider Dr. Danuloff, and found that
10 the city of Taylor was proper in not hiring him back, is
11 that correct?

12 **A.** I don't know how the case evolved. I know I was
13 deposed in the case, and past that point I have no
14 knowledge how the case was determined.

15 **Q.** Now after you were -- now after questioned the
16 defendant and asked him his version of the events, because
17 I think you indicated earlier despite your history of
18 being one sided, that in this case you were going to give
19 a fair and balanced report, correct?

20 **A.** Mr. Waterstreet, you have alleged many times and you
21 bring documents about the opinion that I've been one
22 sided. In my career I've attempted to offer objective
23 opinions on the basis of the information that I've
24 collected and evaluations.

25 I remember that case specifically. I have no

1 memory of what happened afterwards. So what you're
2 telling me is brand new to me. In that case, if I may --

3 Q. So I've moved onto another question.

4 A. Oh, okay. I'm sorry.

5 Q. If your attorney feels it is important that you be
6 able to try to explain why the judge ruled the way he did,
7 that's fine. He can ask that, okay?

8 A. Uh-huh.

9 Q. Is that all right?

10 A. Go right ahead.

11 Q. After you talked with the defendant, did you go back
12 to his attorneys and say hey, this is what he told me. Do
13 you have any evidence that says otherwise?

14 A. Any evidence --

15 Q. So he says --

16 A. I don't understand your question.

17 Q. Let's say for example, the defendant told me there
18 was some misunderstanding about the charges of where he
19 could carry a concealed weapon or not. You testified to
20 that a few minutes ago there was --

21 A. I'm sorry. You're talking about this case now?

22 Q. Yes, I am.

23 A. I'm sorry.

24 Q. Let me start over. In your discussions with Mr.
25 Rayyan.

1 A. Right.

2 Q. Okay. Let me back up.

3 You said that you performed the MMPI-2 test?

4 A. That's correct.

5 Q. And that test takes approximately an hour and a half
6 to two hours depending on a person's mental abilities?

7 A. Give or take, yes, sir.

8 Q. You met with him for two hours and 15 minutes?

9 A. Yes, sir.

10 Q. So when he's talking the test -- were you the one
11 that performed the test?

12 A. No, sir. I have the test to defense counsel because
13 I could not sit in the jail for two and a half hours or
14 whatever the amount of time was. The test was taken under
15 the supervision of the defense counsel in the jail.

16 Q. Really?

17 A. Yes, sir.

18 Q. Contrary to the dictates of the MMPI that says it
19 should only be given by a trained psychologist, you
20 decided to give it to the defense attorney to do it?

21 A. Yes, sir.

22 Q. And then you use that as part of the basis to give
23 an opinion to this Judge?

24 A. Yes, sir.

25 Q. Okay. So in the two hours and 15 minutes talking to

1 Mr. Rayyan, he indicated that apparently there was some
2 misunderstanding about the charges where he could keep the
3 gun and things like that?

4 A. Correct.

5 Q. Now after hearing something like that or anything
6 else that he said, did you go back to the attorneys and
7 say, he told me this because I want to be fair and
8 balanced here? Is there anything that has been provided
9 to you by the government that says otherwise?

10 A. I knew that he --

11 Q. It's a simple yes or no.

12 A. I don't remember. I think we did discuss it, but I
13 don't have a specific memory of that. I apologize.

14 Q. So after you sat with Mr. Rayyan, took down
15 everything that you thought was important for your
16 determination, did you go back to the attorneys and say,
17 this is what he told me, and do you have anything that
18 supports or refutes what he told me?

19 A. Did I ask that specific question? No, sir.

20 Q. Okay. So you didn't try to verify with the
21 information that the government had presented, whether Mr.
22 Rayyan was being honest with you or whether he was lying
23 to you?

24 A. Well, I discussed my findings with the attorneys.

25 Q. It is a simple yes or no question doctor.

1 **A.** Okay. The answer is no.

2 **Q.** So the fact that he confessed to the Wayne County
3 Police and said that he knew he did wrong, and he knew
4 that he was suppose to put the gun in the trunk, you
5 issued a report to this Judge that apparently he had been
6 misled, and that's what Mr. Rayyan had said, he had been
7 misled in believing that he could carrying the gun
8 illegally in the car?

9 **A.** Correct.

10 **Q.** So there's a prime example that had you simply
11 checked with the evidence that was presented, you would
12 know that Mr. Rayyan was making up a story, correct? He
13 was lying to you?

14 **A.** I'm still not sure that he was lying, but you say
15 that he was, then he was. Yes, I would have known that he
16 was lying.

17 **Q.** I will show you the written statement the defendant
18 gave on day of his arrest on October 7th, and there's a
19 highlighted section in that. Can you read what he said in
20 had a highlighted section?

21 **A.** I pulled over and remember that I had my gun on me.
22 I tried to hide it under my seat because I panicked.

23 **Q.** And then he went onto say the next, highlighted
24 section.

25 **A.** No, but -- I don't know if that's but or not -- I

1 was open carrying it to work, but I knew when I got in the
2 car with it, I was wrong. I just forgot to put it in the
3 trunk. I only had it two days. I just bought it on
4 Monday at Dunham's on Ford Road.

5 Q. So he admitted to the police that he knew he was
6 carrying it improperly, but in your report you indicate
7 that he said something completely different?

8 A. Yes, that he was misinformed by the owner of the gun
9 store as to the definition of open carrying and concealed.

10 Q. And you also indicated that one of the reasons you
11 pretty much discounted the horrific things that he has
12 said, that he heard voices and things of that nature, is
13 because at the time you assert that he had a drug adol
14 mind. Is that a fair assessment of what you testified to?

15 A. No. I asserted that I believe what he was saying
16 was an order to contain -- obtain more attention from the
17 woman who he was speaking to.

18 Q. Those were who we all now know are people who were
19 acting on behalf of the United States?

20 A. Correct.

21 Q. But didn't he make similar statements that voices
22 were talking to him to people other than those women?

23 A. I don't remember that he did that. I don't remember
24 that he did that.

25 Q. Bear with me for a moment.

1 A. Sure.

2 Q. Were you provided the copy of the Wayne County Jail
3 intake report dated February 4, 2016?

4 A. I don't believe I was.

5 Q. Okay. So again that would have been one of the
6 situations that had you asked his attorneys, they could
7 have provided you information that would have been
8 contrary to that?

9 A. I assume.

10 Q. And in that report it says that the defendant said
11 that he was hearing voices to hurt himself. He was not
12 talking to those women at that time, was he?

13 A. I think those comments were made at the Wayne County
14 Jail?

15 Q. Right, at the Wayne County Jail?

16 A. Right. Yes.

17 Q. He said that he was hearing voices at the Wayne
18 County Jail. He wasn't talking to the women, was he?

19 A. That's correct.

20 Q. You have to bear with me. I have to grab your
21 report because I have some questions about that?

22 **THE WITNESS:** Your Honor could I get some
23 water?

24 **THE COURT:** Sure. Are you ready
25 Mr. Waterstreet?

1 **MR. WATERSTREET:** If I may have one more
2 moment? I may have misfiled his report in another file.
3 Now I have to look through all of them.

4 Thank you your Honor.

5 **THE COURT:** Okay.

6

7 **BY MR. WATERSTREET:**

8 **Q.** So I want to go over again specifically what you
9 relied on, okay?

10 **A.** Yes, sir.

11 **Q.** Two hours and 15 minute contact with the defendant,
12 at least that's what you say in the first report dated
13 May --

14 **A.** Total contact roughly on March 16th and March 24th.

15 **Q.** Okay. You revert to them in your first report of
16 May 25th, you refer them to them as videos of his
17 behavior. Which specific videos of his behavior?

18 **A.** In district court when he allocuted to the gun
19 charge and marijuana possession.

20 **Q.** Okay.

21 **THE COURT:** Try to keep your voice up,
22 please.

23

24 **BY MR. WATERSTREET:**

25 **Q.** What is the other one that you watched?

1 A. An interview between Mr. Rayyan and, if I'm not
2 mistaken, an FBI agent.

3 Q. A single FBI agent or two FBI agents?

4 A. There was one in the room with him. He was
5 discussing his behavior in relation to the gun charge.

6 Q. That was a --

7 A. Video.

8 Q. Detroit Police I believe?

9 A. I apologize.

10 Q. So defense counsel -- did you ask for anything else
11 to be provided to you other than those two videos?

12 A. I asked them. Defense counsel this is what we have
13 for you. Please examine it. Later on defense counsel
14 gave me something else recently. I'm not recalling what
15 it is. I apologize, but after this report.

16 Q. So the only thing they provided you to use in your
17 analysis were those two videos?

18 A. No, I have an affidavit.

19 Q. Right. Right. I'm talking about the videos at this
20 point.

21 A. I believe so.

22 Q. They did not give you the video in which he made
23 his -- made statements to the FBI?

24 A. I don't believe they did.

25 Q. Okay. Then you said sections of text

1 communications, transcripts with the U.C. regarding
2 statements he indicated that may be suffering from a
3 serious mental disorder. Do you have that list of those
4 transcripts?

5 A. Specific list of the transcripts no, sir. They were
6 the ones where he mentioned the devil talking to him, et
7 cetera.

8 Q. And that's when you determined that he was competent
9 in that initial report May 25th (sic) without any
10 indication of any testing whatsoever?

11 A. I determined that he was competent as a result of my
12 contact with him, and his ability to answer questions that
13 indicated competency skills.

14 Q. Okay. My question is that's when you determined
15 competency, and indicated no testing whatsoever, is that
16 yes or no?

17 A. That's yes.

18 Q. And then you indicated on May 29th (sic), you issued
19 another report, a second report, correct?

20 A. Yes, sir.

21 Q. And this is the first time that you identify that
22 you conducted two interviews, May 16th (sic) and May 24th
23 (sic)?

24 A. Yes, sir.

25 Q. And that you interviewed the father and stepmother?

1 A. Yes, sir.

2 Q. And you reviewed the criminal complaint?

3 A. Yes, sir.

4 Q. The video of the law enforcement officer, his
5 allocution, his statements and phone calls between the
6 defendant and U.C.?

7 A. Not the phone calls themselves, but texts of --
8 what's the word I'm looking for?

9 Q. Transcript?

10 A. Thank you.

11 Q. You didn't listen to the tone of the voices to see
12 if one was being sympathetic or one was trying to push
13 somebody into --

14 A. I listened to conversations between the defendant
15 and the second girl.

16 Q. The recordings?

17 A. Yes.

18 Q. How many recordings did you listen to, because you
19 don't have that listed on the items?

20 A. I apologize. That came after this report. I
21 listened to various sections of the recordings, and
22 conversations about him wanting to kill himself, the
23 individual working for the government saying don't do
24 that. You should only die through jihad.

25 Q. That's not exactly what you said.

1 A. Well, it may not be, but something like that, and
2 she encouraged him not to kill himself, and as time went
3 on, he said that he felt better, et cetera.

4 Q. That was a phone call on February 2nd, wasn't it?

5 A. I'm not aware of the date.

6 Q. Did you listen to the whole conversation or just the
7 parts that defense counsel wanted you to listen to?

8 A. I did not listen to the entire conversation.

9 Q. Who decided you should only listen to that small
10 part?

11 A. I listened to what defense gave me.

12 Q. They didn't give you the whole conversation so you
13 could understand it, because like you said before, it is
14 important to understand something in context, correct?

15 A. It is important to understand in context.

16 Q. Okay. So they intentionally limited you so that you
17 would only listen to a small portion?

18 A. I'm not aware of what they intentionally did.

19 Q. Well, did you turn and say, you know what? There's
20 no way on God's green earth as a ethical doctor, that I
21 can make a determination based solely on this small
22 snippet that you gave me. I want to listen to the whole
23 conversation. Did you say that?

24 A. No, I don't believe I needed to.

25 Q. If you listened to that whole conversation, he

1 finally explains why he is so depressed, is because when
2 he was arrested on October 7th, he had in his possession
3 an iPhone, and his biggest fear was that the police had
4 downloaded everything that he saved on his iPhone, all of
5 the beheading photos, all the beheading videos, his text
6 messages in support of ISIS, photos of him with the gun,
7 photo of him with the mask. Now you heard about the gun
8 and the mask before, haven't you?

9 A. Yes.

10 Q. This was the plan that was foiled by his father when
11 his father took the gun and the mask away, but the
12 defendant was afraid the whole reason he was thinking of
13 killing himself on February 2nd was because he was so
14 worried that the police had already found the evidence
15 that would convict him of the crime that he already
16 disclosed to the undercover, his plans to shoot up the
17 church, correct?

18 A. I'm assume so, yes.

19 Q. And I think even defense filed that with the court,
20 and if anyone wanted to listen it, they could hear the
21 whole thing.

22 And another thing, you said that you had no
23 indication that he was violent in any way, shape or form,
24 had any social behavior, but yet at the end of the
25 conversation, he specifically states that I am not going

1 to be taken alive. If the police come to arrest me, I --
2 he used Arabic -- but basically, I swear to God, I swear
3 to God, I'll take my knife and stab him kill him. Did you
4 listen to that part?

5 A. I'm aware that he said that, yes, sir.

6 Q. How did you become aware of that from that
7 recording?

8 A. I think defense counsel told me about that.

9 Q. And you indicated that he was using six to 10 blunts
10 a day?

11 A. That's what he reported to me.

12 Q. That's what he reported. And then you indicated
13 that you spoke with the mother and the father -- father
14 and stepmother --

15 A. Stepmother.

16 Q. Thank you for correcting me. I appreciate that.
17 Father and stepmother, but when you layout what your
18 findings are to this Judge, you only laid out what his
19 father said. You did not layout what his stepmother said?

20 A. His stepmother was very quiet throughout the entire
21 thing. The conversation was probably 95 percent the
22 father.

23 Q. And you were aware of -- and I certainly hope they
24 provided to you -- the stepmother's statement that he did
25 have problems in high school. You said according to the

1 father, he had no problems in high school, correct?

2 A. Correct.

3 Q. But there were a report issued that has been
4 provided to the defense counsel --

5 MR. MARTIN: Objection, your Honor. We don't
6 have that statement. We have comments in the motion you
7 filed, but we have no statements from the mother.

8 MR. WATERSTREET: Really?

9 MR. MARTIN: Really.

10 MR. WATERSTREET: I have a signed receipt for
11 it. Excuse me for a moment. It maybe a situation where
12 the left hand doesn't know what the right hand is doing.
13 This is a signed receipt of discovery signed by Mr.
14 Shanker for Items 1 through -- what number is that, Mr.
15 Shanker?

16 MR. SHANKER: It doesn't say anything about
17 giving us that interview. We have not received the
18 interview. This says that I received certain discovery,
19 which I did.

20 THE COURT: Certain what?

21 MR. SHANKER: Discovery, but I did not
22 receive this interview. It has not been provided, along
23 with several other things that he refers to in his brief
24 have not employed to us.

25 MR. WATERSTREET: Mr. Shanker, signed that he

1 received Bates Number 1 through 2090.

2 **MR. SHANKER:** True.

3 **MR. WATERSTREET:** And here Bates Number 1, 2,
4 3, which is the brother's statement, 4, 5, 6, --

5 **MR. SHANKER:** You're talking about the
6 stepmother's statement.

7 **MR. WATERSTREET:** Stepmother's -- sister's
8 statement, Page 7.

9 **THE WITNESS:** Right.

10 **MR. WATERSTREET:** Eight, 9, 10, the uncle's
11 statement, Page 11, 12, the mother's statement --
12 stepmother's statement, Pages 13, 14, 15, and 16.

13 **MR. SHANKER:** You are referring to the
14 statements of the mother.

15 **MR. WATERSTREET:** The stepmother.

16 **MR. SHANKER:** No, right now in your brief you
17 refer to the statement of the mother.

18 **MR. WATERSTREET:** Stepmother. My apologizes.
19 Stepmother. And the stepmother --

20 **MR. SHANKER:** And we do not have the
21 interview with the mother that you referred to about the
22 incident when he was 12 years old. We have not received
23 that discovery.

24 **MR. WATERSTREET:** Well, I will read the
25 stepmother's statement then.

1 However, when Khalil attended Star International
2 Academy, he was referred to a specialist. Khalil thought
3 it would be funny or a joke where everybody in class -- he
4 reported -- it was reported to the school principal. He
5 was removed from school and was required to see a
6 specialist because he said he had a dream that he had a
7 gun and shot everybody in class.

8 Now this was provided. This statement of the
9 stepmother was provided to the defense well in advance.

10 Did you take that along with you when you went to
11 interview father and the stepmother to find out if the
12 defendant didn't have, in fact, prior mental illnesses,
13 had gone to a specialist in the past or had suggested in
14 engaging in assaultive conduct?

15 A. I not aware of that document.

16
17 **BY MR. WATERSTREET:**

18 Q. So they did not provide it to you?

19 A. I was not aware of that document.

20 Q. Again, I guess it comes back to you having heard
21 whatever you had as part of your information gathering
22 process and not turning to them and saying, do you have
23 any more information so I can make an informed decision?

24 A. I assumed that the information they provided to me
25 was all the information, yes, sir.

1 Q. Okay. But you were wrong with that assumption,
2 weren't you?

3 A. Apparently so.

4 Q. Did you try to speak to his brother Adam?

5 A. I did not.

6 Q. Why?

7 A. There was nothing that in the report that indicate
8 that I should. I was told that he and his brother had a
9 fight, and that the government -- that was one of the
10 government's assertions, that they had a fight, and that
11 was one of the government's assertions about prior
12 violence.

13 Q. So the defense did not feel it was important to
14 advise you about what his brother thought of his own
15 brother's mental state?

16 A. I'm not aware that I was advised of that, no, sir.

17 Q. So let's see if it would change your opinion
18 concerning his competency. If you heard what his
19 brother -- his own brother who he shares a room with said
20 about the defendant, do you think it would change your
21 opinion at all?

22 A. No. My understanding of a competency determination
23 is such that the individual being examined has to be of a
24 state of mind, whereby his or her competency skills are in
25 question. An individual can have an ongoing mental defect

1 or disease, but that disease doesn't by definition
2 compromise his or her ability to represent himself or
3 herself in his case and work in his own defense. The
4 competency regulations or statutes as that I understand
5 them are really two prong.

6 Q. Well, it's interesting because you went into a long
7 factual basis with earlier defense counsel as to all of
8 the things that you took in account that led you to
9 believe that he was competent, when you took into the fact
10 that you had to discount the fact that he heard voices in
11 the past, you had to discount that he was wanting to
12 engage in terrorist activities, and supporting of ISIS,
13 and all of those things because he was using drugs,
14 correct? You said you needed all of that information
15 earlier, but now that I bring you an additional fact, it's
16 not relevant. Is that what you're saying?

17 A. That fact being --

18 Q. The fact that the brother said that he believes his
19 brother maybe suffering from bipolarism because he goes
20 from really sad to really happy. He also indicated his
21 desire to join ISIS, his wanting to travel overseas to
22 become fighter for them.

23 A. Are you asking about the competency issue?

24 Q. I'm confused here, doctor, because earlier you said
25 you had to take all the facts into account to determine

1 competency, but as I'm bringing you more information, you
2 said you don't need that. I'm trying to understand --

3 A. That's correct because again, the competency issue
4 as I understand it is a two prong issue.

5 Q. This is not a situation where we've seen in the past
6 where you ignore facts that are not consistent with your
7 opinion, is it?

8 A. No, sir.

9 Q. Okay.

10 A. Again, my understanding of the competency statute is
11 as I have reported to you.

12 Q. Okay. In determining his competency, do you take
13 into account any type of psychological problems that maybe
14 manifesting at the time?

15 A. Yes, and I take into account whether or not those
16 are compromising competency skills.

17 Q. Now one of the things that you brought up, you had
18 no proof that he was involved in any type of anti-social
19 behavior, correct, and you have that in your report?

20 A. Correct.

21 Q. Using drugs illegally is an anti-social behavior,
22 correct?

23 A. Yes, it is.

24 Q. Getting in fights and being arrested is anti-social
25 behavior?

1 A. If you use it in the plural like this, yes, sir.

2 Q. Lying in order to purchase a firearm illegally is an
3 anti-social behavior, is it not?

4 A. It is.

5 Q. As a matter of fact, when you -- I'm reluctant to
6 bring this up because you only ran the MMPI-2. You didn't
7 follow the dictates of how the test should be conducted
8 because you gave it to the defense attorneys, contrary to
9 the express direction that only a trained individual is
10 suppose to be giving the test, and when you finally got
11 the test result, you even ignored what was in the results
12 when giving your opinion to the Judge, didn't you?

13 A. I'm not sure what you're referring to.

14 Q. Well, correct me if I am wrong, if there's markers
15 in the MMPI report that specifically says whether is a
16 clinically significant issue that would render a trained
17 clinical psychologist to believe that the defendant is
18 manifesting certain psychological problems, correct? One
19 of them like Category 2 is depression, correct?

20 A. Yes.

21 Q. And as a result of the test that you gave, the
22 results are he's clinically depressed, because he was
23 above a T score of 65?

24 A. That's correct.

25 Q. And also had a T score --

1 A. A little over that on Scale 4.

2 Q. What's Scale 4?

3 A. It's called psychopathic deviant.

4 Q. He's a psychopathic deviant?

5 A. No, sir, he is not a psychopathic deviant. That's
6 the name of the scale.

7 Q. The scoring of a psychopathic deviant, correct?

8 A. That is correct.

9 Q. And an article that was written by the man himself,
10 James Butcher, explaining what is a psychopathic deviant,
11 people who have been engaging in any anti-social behavior
12 or rebellious towards authority figures, show stormy
13 family relationships, and usually blame others for their
14 problems, they show a history of underachievement in
15 school and poor work history, may have marital problems --
16 well, wouldn't apply in this case -- they are considered
17 to be impulsive, and strive for immediate gratification or
18 have impulses. They do not plan well, and they act
19 without consideration of the consequences of their
20 actions. They show impatience, limited frustration
21 tolerance, poor judgment, and high risk taking. They are
22 immature, childish, narcissistic, self-center and selfish.
23 Their behavior is often described as ostentation,
24 exhibitionist and insensitive. They tend to be interested
25 in other terms like of how they can be used. They often

1 thought to be likeable and usually create a good first
2 impression, but a superficial relationships, and usually
3 unable to form warm attachments. They are described as
4 extroverted, outgoing, talkative, active, energetic,
5 spontaneous, intelligent, self-confident, hostile,
6 aggressive, sarcastic, cynical resentful and rebellious.
7 They tend to act out and have an antagonistic behavior and
8 an aggressive outburst. Some are assaultive and show
9 little guilt over negative behavior.

10 Did I -- is that correct?

11 A. That's what Dr. Butcher wrote, yes.

12 Q. Describing what Dr. Butcher, who is the author of
13 the MMPI says a psychopathic deviant is?

14 A. Yes. Did you notice in here that --

15 Q. Let's --

16 A. Well, I want to educate you, if I can.

17 Q. I think I'm pretty well educated.

18 A. Okay.

19 Q. I appreciate it.

20 A. Okay.

21 Q. I appreciate your help, and if your attorney who
22 hired you to give your opinion wants to ask you some
23 questions --

24 A. Absolutely. Absolutely.

25 Q. And you also said that the defendant was very shy.

1 Now the last -- the tenth category is what S.I. What is
2 that?

3 A. Social introversion.

4 Q. And if you're socially introverted, you would have a
5 very high score, would you not, 65 or above, correct?

6 A. That's correct.

7 Q. As a matter of fact, according to the reports, that
8 the defendant is not an introvert. As a matter of fact,
9 he's normal in every way, shape and form. So your claims
10 to the Judge that he is a shy individual are not born out
11 even by the test that you decided to run, are they?

12 A. I'll answer that with an asterisk and the answer is
13 that's correct.

14 Q. Okay. Then I actually -- there is an actual
15 printout. So it requires no interpretation on your part
16 in this report that identifies those things that the
17 report finds to be important in its MMPI analysis, the
18 computer analysis, right?

19 A. Right.

20 Q. It prints out different things, such as profile
21 validity, systematic patterns?

22 A. Right.

23 Q. Profile frequency, profile stability, interpersonal
24 relationships, diagnostic considerations, treatment
25 considerations, correct?

1 **A.** Correct.

2 **Q.** And you even left off parts of those results that
3 were inconsistent with your opinion in this case, did you
4 not?

5 **A.** I put in those results that I felt were clinically
6 relevant. Can I explain something?

7 **Q.** No.

8 **A.** I guess I can't. All right. I understand.

9 **Q.** Okay. I appreciate that you do.

10 Let's go over the report and go through it, and
11 let's go over the things that you left out --

12 **A.** Mr. Waterstreet, I need to ask your indulgence. I
13 have a 2:00 patient scheduled. I need to, if you are
14 going to continue to examine me, which is just fine, I
15 need to make calls to cancel the rest of my day.

16 **MR. WATERSTREET:** Judge, can we take a break
17 for the doctor so we can do that or do you want me to
18 continue on?

19 **THE COURT:** How much more do you have?

20 **MR. WATERSTREET:** Frankly, I'm not sure I
21 have all of that much more, but I do want to point out
22 some factual issues.

23 **THE COURT:** All right. Let's take a five
24 minute break.

25 **THE WITNESS:** I will have to go across the

1 street to get my phone, which is in my car, of course, and
2 make certain calls. So I think it will take more than
3 five minutes.

4 **THE COURT:** You can use a phone around here
5 or counsel has a phone.

6 **THE WITNESS:** I don't have my patients' phone
7 numbers. They are in my appointment book, which is in my
8 car.

9 **THE COURT:** Well, if Mr. Waterstreet --

10 **MR. WATERSTREET:** I will move it along. I'm
11 hoping I can get him out of here before 2:00.

12 **THE COURT:** Go ahead.

13 **THE WITNESS:** That's when the patient starts
14 at 2:00.

15 **THE COURT:** How long of a drive do you have?

16 **THE WITNESS:** Farmington Hills. So it's 25
17 minutes.

18 **MR. WATERSTREET:** Okay. You're putting me
19 under some pressure here.

20 **THE WITNESS:** I'm sorry, sir. I didn't
21 anticipate my testimony would take this long. I
22 apologize.

23

24 **BY MR. WATERSTREET:**

25 **Q.** Did you put in the report to the Judge

1 information -- all of the information that the report
2 printed out?

3 A. I did not.

4 Q. And so you did not include that Mr. Abu-Rayyan made
5 a conscious effort to -- distortion to present himself in
6 favorable light?

7 A. I did not.

8 Q. Did you include the clinical profile suggesting a
9 number of psychological problems? Did you include all the
10 psychological problems?

11 A. I did not.

12 Q. And you already indicated that you did not put down
13 that he is a psychopathic deviant?

14 A. He is not a psychopathic deviant.

15 Q. You did not put that down?

16 A. He is not a psychopathic deviant.

17 Q. You did not put that down?

18 A. That is correct, Mr. Waterstreet.

19 Q. And that he has poor judgment. Did you include
20 that?

21 A. I knew that he had poor judgment.

22 Q. He has impulsivity? He's very impulsive?

23 A. He has been impulsive, yes, sir.

24 Q. He acts out in his behavior? Did you include that?

25 A. He acted out, yes. I believe that was within the

1 body of my report.

2 Q. Did you include that he may behave irresponsibility
3 at times? Did you include that in the report?

4 A. I believe I did in terms of his use of drugs and the
5 impact that it has on him.

6 Q. And that he blames other for his problems that he
7 becomes involved with?

8 A. I saw no evidence of him blaming --

9 Q. But that was in the report and you did not --

10 A. That was in the MMPI report.

11 Q. Yes.

12 A. What showed to me clinically was that he took full
13 responsibility for his behavior and felt deeply ashamed of
14 it.

15 Q. That's what he said to you?

16 A. Yes, sir, that's what he said.

17 Q. But your report -- the test you decided to run, the
18 report results say otherwise, don't they?

19 A. Yes, sir, they do.

20 Q. Okay. Did you also put in here that the defendant
21 Abu-Rayyan feels that his life is no longer worthwhile?

22 A. He felt his life was no longer worthwhile, yes.

23 Q. He also feels that he is losing control of his
24 thought process?

25 A. I don't think I wrote that he is losing control of

1 his thought process.

2 Q. That's part of the report.

3 A. Can you show me -- you mean the MMPI report?

4 Q. Yes.

5 A. I'm sorry. When you say the report, I wasn't
6 sure --

7 Q. The MMPI.

8 A. That's what it says.

9 Q. Okay. But you decided not to provide that
10 information to the Judge?

11 A. Because I found other findings, that's correct. A
12 psychological test is a sample of behavior, and if I may
13 continue with my answer --

14 Q. No.

15 A. No. Okay.

16 Q. Because the question is simply, doctor, you decided
17 what report to test him on, correct?

18 A. Correct.

19 Q. You didn't follow the right procedure to do the
20 test, correct?

21 A. Well, that's arguable. It's arguable.

22 Q. So the written language on how to perform the MMPI
23 says, give it to an untrained attorney to run the test.
24 Is that what it says?

25 A. The MMPI was given --

1 Q. Doctor, it is a very straight yes or no. Does it
2 say it should be given by a qualified individual?

3 A. Yes, it does.

4 Q. So you decided to run one only test and one test
5 only. You didn't run it correctly. You got the results,
6 and you didn't provide all the results that you gave to
7 the Judge that you got from the report from the test that
8 you decided to run?

9 A. I did not unilaterally report to the Judge
10 everything that the test said. That is correct.

11 Q. And do you also include in here that he tends to
12 manipulate relationships for his own end?

13 A. The MMPI report, yes.

14 Q. Yes, but did you report that to the Judge?

15 A. No, because I don't believe that he did or does.

16 Q. Did you say that he is somewhat hedonistic?

17 A. Did I say in my report to the Judge?

18 Q. Yes.

19 A. No, the MMPI said that. Again, when you say report,
20 I'm assuming you're talking about the MMPI report or take
21 me between the two reports.

22 Q. I will. In the MMPI report it says, the defendant
23 Abu-Rayyan is not socially isolated or withdrawn. That
24 was in the report, in the MMPI report, was it not?

25 A. That's correct.

1 Q. But you did not report that to the Judge when you
2 sent it to the Judge?

3 A. Did not report that to the Judge, that is correct.

4 Q. And Abu-Rayyan meets and talks to other people with
5 relative ease?

6 A. Again, are you talking about --

7 Q. MMPI report.

8 A. I did not report that to the Judge.

9 Q. And even though it was in the MMPI report that he is
10 not anxious in social gatherings in the MMPI report, you
11 did not tell that to the Judge?

12 A. That's correct.

13 Q. And did you also fail to report the result of MMPI
14 to the Judge that says, the defendant has long term
15 adjustment problems and he will be resistant to
16 psychological treatment?

17 A. Did I fail to report that? I did.

18 Q. But then you recommended six months, that's good
19 enough for some type of follow up care in your opinion?

20 A. I think I recommended a year if I'm not mistaken.

21 Q. No, six months.

22 A. I can refer to my report.

23 Q. And that his personality is not easily altered. Did
24 you say that in the report that you sent to the Judge?

25 A. No, I did not. That's what the MMPI report said.

1 Q. I want to talk to you quickly about some of the
2 other evidence?

3 **THE WITNESS:** Your Honor, I implore you to
4 let me make some calls. I have an afternoon worth of
5 patients that I have to deal with.

6 **THE COURT:** Well --

7 **THE WITNESS:** I'll be happy to stay here as
8 long as you need me to but --

9 **THE COURT:** How much time is the defense
10 going to require -- could I have a sidebar?

11
12 (Sidebar conference held on the record.)

13
14 **THE COURT:** Okay. This has been helpful.
15 I'm not sure if you understand the phrase beating a dead
16 horse.

17 **MR. WATERSTREET:** Okay.

18 **THE COURT:** I can't imagine there is
19 significant rehabilitation that can occur here.

20 **MR. SHANKER:** We have a few follow up
21 questions. The Judge has made his ruling on this witness'
22 ability to render an opinion on dangerousness. You said
23 that he is not qualified, and Ron, what I'm prepared to do
24 today is ask the Court to appoint an expert to do that,
25 and we could adjourn this hearing. That would be my

1 suggestion, because we would be doing that any way. We
2 have to -- he has to get help at some point, and we have
3 to get an expert who can render an opinion on this issue.

4 So that's what I'm asking the Court to do any way.
5 So I will be asking the Court for an adjournment so we can
6 get an expert.

7 **THE COURT:** I think as it relates to
8 competency, that you have the opportunity --

9 **MR. SHANKER:** Yes.

10 **THE COURT:** -- to have him examined, and
11 certainly consider that, and that may have give rise to an
12 opportunity to revisit the question of release pending
13 trial or not based on what happens there.

14 So yeah, the outcome of both motions today, would
15 not foreclose the opportunity for come back based on
16 whatever the results of the testing that the government
17 obtains and you might obtain in rebuttal to it.

18 **MR. SHANKER:** Well, Judge, we don't think
19 there is any issue with the competency.

20 **MR. WATERSTREET:** I understand, that's your
21 point.

22 **MR. SHANKER:** I have had no problem at all
23 communicating with him.

24 **THE COURT:** I understand, but there's some of
25 this psychological stuff that he has acknowledged is in

1 the MMPI would call that into question, some of the voices
2 and the other stuff in here. At a given point he may be
3 perfectly lucid and perfectly helpful in his own defense,
4 but the -- but that doesn't mean that during the course of
5 the case and the defense that you're seeking, some of the
6 other influences may not undermine his ability to assist.
7 It's a very close call on that question, and the question
8 of release at this point at least I don't think it is a
9 close call.

10 **MR. WATERSTREET:** I hope I'm reading the tea
11 leaves the right way about being a close call here.

12 **THE COURT:** Close call on the question of his
13 competency on the basis that he able to orient himself to
14 the process and understand his role in the process and
15 everybody else's role, but that's not the entire equation.
16 There's a lot of psychological conditions that's been
17 described in the testimony that would -- could potentially
18 undermine that I think given the very low threshold with
19 reasonable cause threshold, he is going to get evaluated,
20 and you'll have the opportunity to get him evaluated with
21 somebody more attune to the forensic.

22 **MR. SHANKER:** So just -- so we are clear, I
23 think what we can do here if it's okay with the Court and
24 with you, we would ask to adjourn the bond hearing until
25 we get an expert that we can bring in --

1 **THE COURT:** Well, I will always be able to
2 consider the testimony here in conjunction with whether
3 there is later testimony, you may or may not come back. I
4 think based on the information at hand today, the motion
5 for release will be denied, but it's subject to review,
6 and I will tell you explicitly that you will have the
7 opportunity to renew that request and produce other
8 testimony that might lead to me reversing that decision,
9 but based on what we got now, it will be no.

10 **MR. SHANKER:** Okay.

11 **MR. WATERSTREET:** All right.

12
13 (Sidebar conference concluded.)

14
15 **MR. WATERSTREET:** Your Honor, based upon the
16 Court's -- our sidebar discussion, I do have additional
17 questions of the doctor, but I think based upon where we
18 are right now, I will not ask those questions at this
19 time. If he is proffered again as a witness, I would like
20 to have the opportunity to continue the cross examination.

21 **THE COURT:** Thank you, Mr. Waterstreet.

22 **MR. WATERSTREET:** Thank you, your Honor.

23 **THE COURT:** Anything from defense counsel by
24 way redirect?

25 **MR. SHANKER:** Just briefly.

1 **MR. MARTIN:** Just briefly.

2 **THE COURT:** Sure. We will get you out of
3 here on time to get you to your clients.

4

5 **REDIRECT EXAMINATION**

6

7 **BY MR. MARTIN:**

8

9 **Q.** Dr. Danuloff, in terms of the MMPI, could you
10 explain how that was administered, why you decided to do
11 it that way, and whether it was the only thing that you
12 relied on?

13 **A.** I administered that way because it was just not fair
14 for me to -- fair from a cost standpoint, from any
15 standpoint, for me to be sitting there next to the
16 defendant while he answered 567 true or false questions.
17 He was under the observation of his attorney who --

18 **Q.** Just to be clear, we actually had our investigator I
19 believe.

20 **A.** I'm sorry, your investigator.

21 **Q.** And there's no questions asked during that exam?

22 **A.** None, zero, and I gave the investigator specific
23 directions as to just sit there and allow the defendant to
24 take the exam. I told him exactly what to say to him in
25 terms of direction. He was very thorough in my

1 understanding of what I told him to do, and it is my
2 belief that given the circumstances of this matter, the
3 MMPI-2 was given appropriately, ethically and competently.

4 With regard to your second question, opposing
5 counsel's questioning of me of the MMPI-2 is a perfect
6 representation of the misuse of psychological testing.
7 Psychological testing and the results of psychological
8 testing is one of the entire sources of information that a
9 clinician uses to make a determination, and if I maybe so
10 bold, thank you for the opportunity, in the last page of
11 MMPI-2 printout which occurs in every MMPI printout at the
12 end of the report, I would like to read this into the
13 record, if I play.

14 This MMPI-2 interpretative can serve as a useful
15 source for hypotheses about clients. This report is based
16 on objectively derived scale interpretations that have
17 been developed with diverse groups of patients. The
18 personality descriptions inferences and recommendations
19 contain herein need to be verified by other sources of
20 clinical information, because individual clients may not
21 fully match the prototype. The information in this report
22 should only be used by a trained and qualified test
23 interpreter.

24 Again, the developers of the tests themselves
25 suggest that absolutely reliance only a test for making

1 determinations, and basically just regurgitating what a
2 computer printout says is an inappropriate use of the
3 test.

4 It is my belief that this instrument,
5 interestingly enough, verifies my clinical findings of
6 this individual and his history. Whether or not the
7 social introversion scale is high or not is a tiny bit of
8 information compared to the entire clinical picture.

9 Q. Same thing about the deviant --

10 A. Psychopathic deviant question is, with all due
11 respect to counsel, preposterous. I would never, ever
12 report to a court or make any conclusions on the basis of
13 an individual score on one particular scale item, scale
14 score.

15 In addition to that, individuals who are chronic
16 substance users frequently give you a jump in Scale 4.
17 Scale 2 is depression that the scale indicated is an
18 inaccurate representation. He's very depressed. He
19 should be depressed. He's sitting in jail, and he's
20 facing very serious charges. If he wasn't depressed, I'd
21 be more concern about his emotional and psychological
22 well-being.

23 And again, if I may, my charge was to evaluate
24 Mr. Rayyan as I saw him today, and I took the information
25 that I was provided, and used it in terms of what I saw of

1 this individual. Never in my career would I use a
2 psychological instrument or any group of psychological
3 instruments in -- exclusively without use of clinical
4 information and extra outside information to use.

5 It is also my belief and my sad opinion that my
6 entire career has been eviscerated today by counsel, and I
7 certainly know that in a 44 year career in this work, you
8 make enemies. There's no doubt about it.

9 I would certainly ask the Court to give some
10 determination of the value of some of those. Certainly
11 people have disagreed with me over the course of my
12 career, and people have agreed with me over the course of
13 my career.

14 Have I made enemies? I have some attorneys who
15 would not walk across the street to see me, and I have
16 some attorneys who I would not walk across the street to
17 see. It is the nature of the work.

18 And while there have been issues that counsel
19 brought up to me that I wasn't even aware of like that
20 McCall case or whatever, I can only answer truthfully and
21 honestly to his statements, and I give him credit for his
22 attempt to demolish my credibility, and I appreciate you
23 allowing me to respond to those efforts.

24 **Q.** One other last thing, you had a chance to read
25 through the government's opposition to the bond motion?

1 **A.** Yes, sir.

2 **Q.** And that brings up some of the comments that he was
3 reading in about the stepmother and the brother. Nothing
4 that you saw in that -- has anything that you saw in that
5 changed your opinion?

6 **A.** No. These are lay people who have opinions. If I
7 had a dollar for every individual who has claimed --
8 untrained individual who has claimed that somebody is
9 bipolar or manic depression or this or that, I would have
10 many, many dollars. Many dollars.

11 **Q.** And there was mention of this Wayne County Jail
12 intake report. I believe that is also mentioned in here,
13 but that would fit with -- if he had done that to get in
14 protective custody, would that fit with your opinion of
15 him?

16 **A.** Yes, sir, it would because protective custody is
17 different as he saw it in general population.

18 **MR. MARTIN:** I have no further questions,
19 your Honor.

20 **THE COURT:** All right. Thank you.

21 We are going to let you step down, and get to your
22 patients.

23 **THE WITNESS:** Thank you, your Honor.

24

25 (Witness excused.)

1 **THE COURT:** All right. As it relates to the
2 competency motion filed by the government, I think I've
3 heard enough and understand the parties positions well
4 enough to make a ruling.

5 As it relates to the bond motion, is there
6 anything in addition that you would like to argue for the
7 Court's consideration?

8 **MR. SHANKER:** Your Honor, given our
9 discussion at sidebar, and given that the Court did find
10 that Dr. Danuloff was not qualified to render an opinion
11 on dangerousness on risk assessments, I will rely on all
12 of the arguments that I have presented in my briefs to the
13 Court, and I would just ask for the opportunity to return
14 at another time if the opportunity presents itself.

15 **THE COURT:** Thank you. Mr. Waterstreet,
16 anything additional on your part?

17 **MR. WATERSTREET:** If we're -- if this is a
18 push-off to another day, there's nothing that I need to
19 say at this time.

20 **THE COURT:** Okay. So as it relates to the
21 competency motion, I indicated to counsel that I thought
22 that question before the Court is fairly a close call,
23 because it's pretty clear that -- that the defendant at,
24 least at multiple junctures when he is talking about with
25 his counsel or in this case Dr. Danuloff or with his

1 family, is well-oriented with respect to the process, what
2 he's facing here, what his role is, what his counsel role
3 is, what the issues are that need to be addressed by the
4 Court, and based upon that acknowledged interaction, which
5 includes the attorneys impressions of their client, would
6 suggest that competency is not sufficiently -- his
7 potential incompetence was not sufficiently established or
8 sufficiently a concern even that further examination is
9 required.

10 But we've also heard Dr. Danuloff talk about the
11 scores that were received in connection with the MMPI.
12 We've heard him indicate kind of a lack of exposure to
13 many of the underlying facts, including the defendant's
14 voices -- hearing voices, and his imaginations, if not
15 hallucinations about mass killings, and his obsession with
16 some of the conduct of jihadists and violent gruesome
17 behavior, inflicting harm, if not taking lives of others,
18 and this test apparently returned scores that were high
19 for depression, deviance, impulsive behavior, unresponsive
20 behavior, and these are all issues that made from time to
21 time render him incapable of providing logical response to
22 his lawyers, and to the decision making that has to occur
23 during the course of the trial. And I think, again, the
24 standard is relatively low that needs to be met by the
25 government in succeeding to obtain an examination -- well,

1 an examination of the defendant for competency, and I
2 that's met. I think it's met by the those circumstances
3 that are subject of the briefing on both sides of the
4 case.

5 So the Court will grant the government's request
6 in that regard, and as it relates to whether the defendant
7 can be released safely into the community with conditions,
8 again these same questions make that a no. I mean, the
9 Court is not -- certainly there's been no evidence alluded
10 to in the pleadings even that would lead to a conclusion
11 that he could be safely released given some of the history
12 that's undisputed between the parties, and the interest
13 that he has had, and the messaging that's been reduced to
14 transcript, and the Court's ruling, of course, that Dr.
15 Danuloff is not qualified by knowledged, skill,
16 experience, training or education to offer opinion
17 testimony to the contrary leaves the defense without
18 significant evidence to offset that which is relied upon
19 by the government.

20 And so I did indicate at sidebar to counsel that
21 the government's expert examination may affect the
22 ultimate determination on release to the community, and
23 even if not, the defense counsel will have the opportunity
24 to identify a suitable examiner who can examine the
25 defendant for competency, as well as his potential risk or

1 lack of risk for release with another proffered expert
2 following the examination by the government.

3 So I'm always willing to entertain a renewal of
4 the request by the defense that I fashion a release with
5 conditions, but we're not there yet.

6 So with that, the Court will deny without
7 prejudice the bond motion filed by the defendant, and I
8 think that's all we need to do.

9 Thank you.

10
11 (Proceedings concluded.)

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C E R T I F I C A T I O N

I, Ronald A. DiBartolomeo, official court reporter for the United States District Court, Eastern District of Michigan, Southern Division, appointed pursuant to the provisions of Title 28, United States Code, Section 753, do hereby certify that the foregoing is a correct transcript of the proceedings in the above-entitled cause on the date hereinbefore set forth.

I do further certify that the foregoing transcript has been prepared by me or under my direction.

Ronald A. DiBartolomeo, CSR
Official Court Reporter

Date

- - -